



## State of Wisconsin \ DEPARTMENT OF NATURAL RESOURCES

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TO: Interested Parties

RE: Federally Mandated Ozone, Fine Particles and Haze Rules

This letter is to inform you of the Department of Natural Resources' plans to develop rules related to ozone, fine particles and haze. These rules include the Clean Air Interstate Rule (CAIR), the Reasonably Available Control Technology rule for NO<sub>x</sub> (NO<sub>x</sub> RACT) and the Best Available Retrofit Technology (BART) rule. The following information outlines proposals the Department intends to make to the Natural Resources Board (NRB), and it provides our schedule for rule development. As always, the NRB will have final approval of both authorizing public hearings, as well as final adoption, of these rules.

The federal CAIR rule is designed to reduce the interstate transport of ozone and fine particles. CAIR establishes a market for trading annual SO<sub>2</sub> allowances, annual NO<sub>x</sub> allowances and ozone season NO<sub>x</sub> allowances. It covers 28 eastern states and the Washington D.C. area. RACT is a provision in the Clean Air Act that requires major sources of NO<sub>x</sub> emissions in an ozone nonattainment area to install reasonably available and cost-effective emission controls. BART addresses the installation of control technologies at targeted older units that contribute to the haze problem in National Parks and other scenic vistas.

On March 29, April 5 and April 6, 2006, public information meetings were held at which the DNR presented preliminary options for state implementation of these rules. We received many detailed comments and suggestions, but for the most part, the comments can be grouped in three overarching themes:

1. Ozone attainment should be separated from the development of CAIR, RACT and BART rules;
2. CAIR adoption and submittal to the EPA should be completed as expeditiously as possible; and
3. The Department has the discretion to determine that NO<sub>x</sub> RACT and BART for power plants would be satisfied by complying with CAIR.

Following are our responses to the three overarching themes:

### **1. Ozone Attainment Should be Separated from the Development of CAIR, RACT and BART Rules.**

Commenters urged the Department to develop the CAIR, RACT and BART rules separately from the development of an 8-hour ozone attainment strategy.

**DNR Response:** The Department proposal to the NRB will separate the CAIR rule package from the RACT and BART rules. We will not presume at this point whether or not we are able to demonstrate attainment for the 8-hour ozone standard.

Before these rule packages are finally adopted, I believe that the Department will have to determine whether or not we are able to demonstrate attainment with these rules, but that decision is months away. In the meantime, we will continue to work cooperatively with stakeholders to more fully examine the modeling and weight of evidence information that could be used to support such a demonstration. It should be noted, therefore, that we will have to delay the question of whether it might be necessary to further regulate power plant and industrial emission sources beyond the level of controls established by CAIR, RACT and BART in order to demonstrate 8-hour ozone attainment or visibility progress.

**2. CAIR Adoption and Submittal to the EPA Should be as Expeditious as Possible.** Commenters urged the Department to proceed with rule adoption as expeditiously as possible to meet federal deadlines.

**DNR Response:** The Department will prepare and, as part of the hearing authorization, will propose to the NRB that we submit an "Abbreviated SIP." The Abbreviated SIP gives us until March 31, 2007 to meet the federal deadline.

The U.S. EPA issued federal implementation plans (FIPs) on March 15, 2006 for the implementation of the CAIR trading programs. A FIP goes into effect if a state fails to submit a full CAIR SIP by September 11, 2006. The FIPs explicitly provide states with an option to submit an "abbreviated SIP" to meet CAIR (71 FR 25345). Choosing the abbreviated SIP option commits the state to the federal model rule for the structure of the federal CAIR trading program. However, under the federal rules and an abbreviated SIP, the state is still left with some key discretionary decisions such as the methodology for allocating annual and/or ozone season NO<sub>x</sub> allowances. Since an abbreviated SIP requires less time for EPA review, the deadline for a state submitting an abbreviated CAIR SIP is March 31, 2007.

The Department will propose taking advantage of the abbreviated SIP option and will consider those aspects that are discretionary, pursuant to the abbreviated CAIR SIP process. The Department's proposed CAIR rules and abbreviated SIP will contain both the allocation methodology as well as the specific allocations for the first three years.

Although under an abbreviated SIP the FIP technically goes into effect on September 11, 2006, there is little effect. U.S. EPA will not record NO<sub>x</sub> allocations or take any other steps to implement FIP requirements that would impact a state's ability to regulate their sources in a different manner until September 30, 2007. Additionally, the FIPs do not make any determination whether CAIR satisfies the requirements of NO<sub>x</sub> RACT and BART for power plants. U.S. EPA will withdraw the FIP for a state once that state's plan for meeting CAIR requirements is in place. Furthermore, the CAIR FIP does not carry any sanctions for the state nor does it indicate that the state is deficient in any area of regulating air pollution.

**3. The Department has the Discretion to Determine that NO<sub>x</sub> RACT and BART for Power Plants Would be Satisfied by Complying with CAIR.** Many commenters suggested that the Department make a determination that the CAIR rule will satisfy NO<sub>x</sub> RACT and BART for power plants.

**DNR Response:** The Department is not able to determine at this time whether or not the CAIR rule will satisfy NO<sub>x</sub> RACT and BART for power plants.

One of the repeated comments on the options presented at the public information meetings was whether the Department will determine that CAIR satisfies the requirements of RACT and BART with respect to power plants. In the Final Rule to Implement the 8-Hour Ozone NAAQS – Phase 2 guidance, the U.S. EPA determined that at a regional level, controls installed under the CAIR would result in a beyond RACT level of control. (70 FR 71657) The U.S. EPA similarly found that the controls installed under CAIR would result in a "better than BART" level of control at the national level. (Technical Support Document for Final Clean Air Interstate Rule, March 2005)

The U.S. EPA has given the states the discretion to determine, at the state level, whether NO<sub>x</sub> RACT and BART for power plants are indeed satisfied by the implementation of CAIR. (70 FR 71657-71658(NO<sub>x</sub> RACT discretion); 70 FR 25260 (BART discretion)) The Department is analyzing whether CAIR would satisfy the requirements for NO<sub>x</sub> RACT and BART in Wisconsin and has yet to make this determination. Clearly, as part of the RACT and BART rulemaking process, the Department will have to resolve this issue.

In order to properly make this determination, the Department hopes to work individually with each utility representative to discuss implementation strategies and whether these strategies would be sufficient to comply with RACT and BART requirements. The U.S. EPA suggested this approach in the Phase II guidance stating that:

*"We believe that many power companies will develop their strategies for complying with CAIR based, in part, on consultations with air quality officials in the areas in which their plants are*

*located....We are aware that, in the past, companies have worked with air quality officials to meet their emission control obligations under a cap-and-trade approach such as the NO<sub>x</sub> SIP Call while also addressing the concerns of air quality officials about the air quality impacts of specific plants. This has led to controlling emissions from power plants located in or near specific ozone nonattainment areas." (70 FR 71659)*

The rule adoption timeline for RACT and BART may be delayed depending on the time necessary to make this determination. This determination will not affect the CAIR rule adoption timeline.

### **Next Steps for Public Input**

Given the need for a transparent rule development process, I believe it is prudent to take the extra time as allowed under the CAIR FIP to further develop the rules covering power plants. The Department envisions the following schedule for CAIR, RACT and BART:

	CAIR	RACT	BART
Clean Air Act Task Force Meeting (Response to comments from Public Meetings)	Completed June 2006	Completed June 2006	Completed June 2006
Natural Resources Board, Request Hearing Authorization	Aug. 2006	Sept. 2006	Sept. 2006
Clean Air Act Task Force Meetings (Draft CAIR, RACT and BART rule language)	Sept. 2006	Oct. 2006	Oct. 2006
Public Hearings	Oct. 2006	Nov. 2006	Nov. 2006
Natural Resources Board, Request Rule Adoption	Jan. 2007	Jan. 2007	Jan. 2007
Legislative Review	Feb. 2007	Feb. 2007	Feb. 2007
Submit to EPA	March 31, 2007	April 2007	April 2007

It is important to note in the schedule that although CAIR, RACT and BART are on slightly different timelines, the Department's goals are to present all three rules to the Natural Resource Board for adoption at the same time.

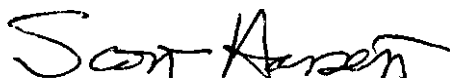
### **Clean Air Mercury Rule**

While the Clean Air Mercury Rule (CAMR) also addresses the regulation of power plants, it will not be addressed in this letter. A rule package addressing CAMR will be brought to the Natural Resources Board for hearing authorization in late fall.

### **Summary**

I hope and trust that these decisions will provide the intended opportunity to consider additional modeling and weight of evidence information, allow further dialogue, and result in better mutual understanding and consensus before final rules related to CAIR, RACT and BART are adopted by the Natural Resources Board.

Sincerely,



Scott Hassett